

CHAPTER SIXTEEN

MOTHER TONGUE EDUCATION AS A LEGAL RIGHT FOR INDIGENOUS CHILDREN

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Abstract

Education is a fundamental right, but not always an unqualified good. For indigenous peoples around the world, education has historically failed to deliver fully on its promise of economic and social advancement. Instead, it has often worked to deprive indigenous children of their sense of cultural identity and value. In some cases, education has been an instrument of cultural destruction and has operated to endanger traditional languages (Rubio-Marín 2003, pp. 70–73). This chapter sketches the history and reasons for the denial of mother tongue education and discusses how assimilationist education derives from a mono-cultural outlook. It then examines the right to bilingual education in international law, arguing that the voice of a pluralist international community is clear: Mother tongue education is the child's right. Language preservation is the minority community's right. The chapter then examines Australia's domestic approach to legal rights and argues that some statutory protection of the right to bilingual education will be required to secure an appropriate education for indigenous-language-speaking children. Taking account of the legal rights of indigenous children in Australia, the work of applied linguists is relevant to shaping educational policy and curriculum.

Why teach traditional languages?

Indigenous Australian children who arrive in primary school speaking a language other than Standard Australian English (SAE) are in a precarious educational situation. If they cannot understand their teachers, they cannot access the curriculum. They are likely to fall behind in literacy and numeracy, and will simultaneously lose self-confidence and a positive

sense of their cultural identity (Kymlicka & Patten 2003, p. 146). Currently, indigenous peoples rank significantly behind non-indigenous Australians in educational achievement, in employment, in life expectancy, and in other measures of wellbeing.¹ If provided with an English immersion program (Lucas & Katz 1994, p. 537), they may be successful in gaining literacy and numeracy skills in English. But their overall achievement is likely to be lower than their English-speaking counterparts, who, while struggling to learn new concepts, do not have to struggle simultaneously to understand the language of instruction. Moreover, their new language skills are often associated with loss of their ability to speak their mother tongue. Loss of their language undermines indigenous communities and depletes cultural diversity.

Teaching endangered indigenous languages in schools is an important step toward preserving endangered cultural heritage. It not only nurtures linguistic heritage, but also sustains indigenous knowledge and identity.

Language is at the core of cultural identity. It links people to their land, protects history through story and song, and the key to kinship systems and to the intricacies of tribal law including spirituality, secret/sacred objects and rites. Language is a major factor in people retaining their cultural identity and many say “if the Language is strong, then Culture is strong” (ATSIC 2000, p. 161).

The link between language and identity can hardly be overstated. One Native American woman, commenting on the importance of maintaining her indigenous language, said:

If we're able to keep our language going, we'll be able to pass on knowledge, from generation to generation. Without it, we're going to lose so much. We're going to be just like everybody else. We can tell them...this is how it was.... We used to dance, but we don't know our songs. We used to have these traditional activities, but we can't do them no more, because we can't talk. We would lose so much without our language (Rock, as quoted in Dussias 2008, p. 5).

Programs that maintain, preserve or revitalize indigenous languages are also “widely accepted as a means of assisting in the general well-being of the indigenous population” (Purdie, et al. 2008, p. 12). Indigenous language programs promote a sense of fairness and equality, relieve some of the sense of oppression experienced by indigenous people, and act to

¹Australian Bureau of Statistics:
www.abs.gov.au/websitedbs/D3310114.nsf/home/Home?opendocument

soothe the degree of alienation experienced (Kibbee 2008, p. 92). For school-age children, language maintenance programs may also contribute positively to “[c]ultural literacy in English, cognitive development, self-concept, verbal intelligence, mental creativity, adaptability, self-confidence” (Nicholls 1994, p. 14).

In other words, for indigenous children whose mother tongue is a traditional Australian language or a creole, a curriculum presented only in English denies them equal access to the fundamental right to education afforded all other children. The standard curriculum must be adapted to meet the needs of non-English speaking indigenous children. Evidence from around the world is that the most effective way to attain literacy is to introduce reading and writing in the mother tongue of the student. If literate in their mother tongue, the student learns English literacy skills more readily and is more likely to reach desired educational outcomes (Magga, et al. 2005, p. 4). It has also been established that bilingualism has additional cognitive benefits, including mental flexibility, greater intelligence and, in old age, protection from dementia (Bialystok 2011). Yet, despite overwhelming evidence that bilingual education is effective for indigenous children, it can be a political football.

Perhaps because language plays a central role in perpetuating minority culture and identity, it is subject to political pressures in many countries. The associated policy conflicts are frequently emotional and highly pitched, reflecting the identity politics of the majority (Skutnabb-Kangas 2008, pp. 117–19). Disputes about the use of Corsican in France, Basque in Spain, Spanish in the United States, the Uyghur language in China, and Kurdish in Turkey, for example, have been at the center of recent political controversy and even civil unrest. Bilingual education policies in Australia are similarly subject to pressures from ill-informed or politically motivated actors. Bilingual education programs have suffered from inadequate resourcing, inconsistent support and threats of abolition (Nicholls 2005, p. 162).

Australian states have a greater responsibility to guarantee the linguistic rights of indigenous peoples than those of immigrant minorities, who can usually rely on contacts in their country of origin for support in maintaining their language. Foreign languages (such as French, German, and Spanish) are taught more pervasively in Australian schools than indigenous languages (Purdie, et al. 2008, pp. 50–90), while indigenous language programs have been fading or phased out. Since 1978, for example, the Northern Territory government has reduced funds for indigenous language programs, the number of specialist staff and the number of bilingual schools (Devlin 2011a, p. 261). Further, the main

goals for indigenous bilingual programs have changed to focus on English literacy (McKay 1996, pp. 113–14). Withering financial and policy support eventually led to an end to bilingual education in 1998 (Devlin 2009). After a short-lived reinstatement of bilingual education in 2005, the Northern Territory government replaced it with a “four-hours-of-English” policy based on what Devlin has labelled “dishonest manipulation of data” to show falsely the inferior literacy results of bilingual compared with monolingual programs (Devlin 2011b, p. 65). Australian education policy has failed to deliver a cognitively and culturally grounded education for indigenous students.

**Being taught in the mother tongue is a duty—
not a charitable gift**

In spite of Australia’s failure to reliably deliver mother tongue education to indigenous children, the argument for a special duty in relation to indigenous languages is strong, supported by earlier successful programs and by the decades of discriminatory laws implementing assimilation through, among other things, language suppression. Further, Australia has acknowledged the importance of education and of mother tongue education by endorsing many international legal conventions that describe those rights. So Australia has recognized the fundamental rights of indigenous children to education on equal terms and to maintain their heritage and culture. Table 16-1 contains a list of relevant international instruments endorsed by Australia with references to the paragraphs that relate to educational rights.

Table 16-1: International Covenants and Declarations relevant to the Right to Education

Acronym or initialism	Convention, Declaration or Covenant	Operative
CCITPIC	Convention concerning Indigenous and Tribal Peoples in Independent Countries (ILO No. 169), 72 ILO Official Bull. 59, Article 28	5 September 1991
CRC	Convention on the Rights of the Child, 1577 UNTS 3, Articles 3; 12; 27; 28(b),(c); 29(c),(d); Article 30 (has a complaints committee) Opened for signature 20 November 1989	2 September 1990

Acronym or initialism	Convention, Declaration or Covenant	Operative
DRC	Declaration of the Rights of the Child, GA Res 1386 (XIV)	20 November 1959
DRPBNERLM	<i>Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities</i> , UN Doc A/Res/47/135, Article 4(3)	18 December 1992
ICCPR	<i>International Covenant on Civil and Political Rights</i> , 999 UNTS 171, Articles 24, 25, 27 (has a complaints committee) Opened for signature 16 December 1966	23 March 1976
ICERD	<i>International Convention on the Elimination of all forms of Racial Discrimination</i> , 660 UNTS 195, Article 5 (has a complaints committee) Opened for signature 7 March 1966	4 January 1969
ICESCR	<i>International Covenant on Economic, Social and Cultural Rights</i> , 993 UNTS 3. Articles 2, 5, 13, 14, 15, 27 (has a complaints committee) Opened for signature 16 December 1966	3 January 1976
UDHR	<i>Universal Declaration of Human Rights</i> , GA Res 217 (III), UN GAOR, 3rd Sess, Supp No. 13, UN Doc A/810, Articles 2; 26; 27	10 December 1948
UNDRIP	<i>United Nations Declaration on the Rights of Indigenous People</i> , GA Res 61/295, UN GAOR, 61 st Sess, 107 th plenary meeting, Supp No 49, UN Doc A/Res/61/295, Articles 1-3; 8.1; especially 13; 14; 17.2; 23	13 September 2007
UNESCO	United Nations Educational, Scientific and Cultural Organization, <i>Convention Against Discrimination in Education</i> , 14 December 1960	22 May 1962

For example, primary and secondary education is internationally declared a fundamental right in the 1959 Declaration of the Rights of the Child (DRC), which Australia supported. It is part of the Australian Human

Rights Commission (AHRC)'s Charter, and provides that "the child is entitled to receive education, which shall be free and compulsory, at least in the elementary stages." The right to education is also recognized in Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), to which Australia is a party:

The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace (ICESCR, Article 13).

Education is a fundamental right and can "unlock other rights" (Tomasevski 2001, p. 12), such as access to the labor market, and the ability to assert human rights. "Its denial can lead to compounded denials of other human rights and the perpetuation of poverty" (Tomasevski 2005, p. 74). Education is intended to be a right of empowerment that will "enable all persons to participate effectively in a free society" (UDHR, preamble).

Education can also be a powerful engine for socioeconomic development, achieving responsible citizenship, and developing national identity and patriotism. School policymakers often view the forging of a national identity as a central function of state-provided education (Kaestle 1983, pp. 4–7). Education has also been called "the most widespread form of institutionalized socialization of children" (Tomasevski 2005, p. 74). The DRC states it will enable the child "to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner in conditions of freedom and dignity" (DRC, Principle 2).

The socialization and identity-formation aspects of schooling are not "add-on" or optional. Even when the educational approach is deliberately bicultural or multicultural, children cannot be given knowledge without values. No knowledge is value-free. What counts as knowledge is itself a distillation of the values of a particular culture. Although education is necessarily assimilationist to some extent, it does at least pass on to children the culture, values and skills of the adult teachers.

Historical experience in Australia and other countries

Perhaps the most extreme examples of forced assimilation of indigenous minorities through education are found in the boarding school programs of Canada, the United States and Australia. In Canada, for example, Native American children were subject to a decades-long federal government policy that removed them from their families and forced them to live in residential schools (Miller 1996). In a 2008 apology for the policy, Prime Minister Stephen Harper admitted that the residential school education had been designed to effect cultural annihilation:

Two primary objectives of the residential schools system were to remove and isolate children from the influence of their homes, families, traditions and cultures, and to assimilate them into the dominant culture. These objectives were based on the assumption that aboriginal cultures and spiritual beliefs were inferior and unequal. (Harper 2008)

Similarly, Native American children in the United States were taken from their families and taught in “Indian schools” between 1885 and the mid-twentieth century in an effort to “dissolve Native Americans into the great American melting pot” (Dussias 2008, p. 12). Between 1910 and 1974, the Australian Government also employed education to eliminate ethnic difference, taking thousands of Aboriginal and Torres Strait Islander children from their families to be educated at boarding schools.² In Australia and North America indigenous children were forcibly taken from their families to residential schools where they were inculcated with the dominant white culture. They were required to adopt a new language, a new religion, a new mode of dress and hair style. They were given unfamiliar beds and foods and required to leave behind their customs and traditions and spend their days in unfamiliar spaces doing unfamiliar tasks.

When viewed from a comfortable historical distance, it is easy to understand how this educational policy inflicted harm. By depriving the children of their family, culture, and a large part of their identity, assimilationist education not only created a rift in indigenous communities, but also imposed life-long emotional and social burdens on thousands of indigenous children (HREOC 1997). Seen through the eyes of its proponents at the time, however, residential education was a charity, a good work, a gift, that offered the benefits of civilization, advancement and opportunity. The education offered by the boarding schools placed no

² Prime Minister Kevin Rudd formally apologized in 2008 for the policy (Rudd 2008).

value on indigenous knowledge, language, experience, values, families or community ties. Instead, attributes of indigenous culture were seen as a problem to be eliminated through education. It was thought that once provided with the rudimentary elements of white culture, these children might climb the rungs of the white social ladder and become participants in the dominant culture. The children and their descendants would no longer be members of an outcast and inferior class. According to Cecil Cook, the Northern Territory Protector of Natives between 1927 and 1937:

Generally by the fifth and invariably by the sixth generation, all native characteristics of the Australian Aborigine are eradicated. The problem of our half-castes will quickly be eliminated by the complete disappearance of the black race, and the swift submergence of their progeny in the white. (Rudd 2008)

Few in the indigenous language policy discussion argue against teaching English to indigenous language-speaking children. Around the globe, however, indigenous children are less likely to be enrolled in school and have higher drop out and illiteracy rates than non-indigenous children (Committee on the Rights of the Child, General Comment No. 11 (2009), para 59). Conversely, they are disproportionately to be imprisoned (Tonry 1997, p. 19). All have been shown to have negative educational and social outcomes in dominant language educational systems (Bewicke 2009, p. 135; Skutnabb-Kangas & Dunbar 2010, pp. 44–56).

As noted earlier, while there may be multiple causes for minority children to lag behind majority children in educational and socioeconomic outcomes (such as lack of high-quality educational programs, low expectations, poor attendance, family poverty, distance from school, and lack of a place and time to study), a growing body of research indicates that instruction in the child's mother tongue is an essential ingredient of an appropriate education:

There is overwhelming technical evidence that the most efficacious approach to attaining literacy—a fundamental goal of mass education—is to introduce reading and writing in the mother tongue of the student, followed, if desirable, by a transition to literacy in a national language (Sutton 2005, p. 104).

While it is not possible for education to avoid all assimilation, it is possible to assimilate the child to a bicultural or pluralist culture. Mother tongue instruction requires a shift in one's educational mindset from a mono-cultural orientation to a pluralist one. The shift toward a pluralist concept of citizenship and culture is a shift that national policy initiatives

have already recognized in a number of ways, including through a national apology. The benefits of diversity and a pluralist culture for a contemporary democracy are well known. Unfortunately, however, the impulse to blame the minority culture for social problems and to expect minorities to assimilate into the mainstream mono-culture remains strong.

International Mother tongue instruction obligations

International law and declarations (see Table 16-1) do not sit on the fence in the debate over mother tongue instruction. The international community is pluralist—ready to acknowledge and support the value of a variety of cultures. International provisions recognize that education can alienate a child from their family and culture and are worded to guard against that possibility. CRC expresses the right to education in terms that prioritize the child's family cultural heritage and promote multicultural affinity. Article 29 requires that education must (among other things) be directed to:

(para (b)) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
(para (c)) The preparation of the child for responsible life in a free society
...

Article 29(c) also emphasizes how important it is that free societies respect national values. The Article indicates that internationally agreed human rights values should be embodied in the content of education in each country. Whatever curricula choices are arrived at by local school authorities, those values must be involved in guiding the curriculum, and be communicated to the child. Article 30 further requires that an indigenous child not be "denied [the right to] use his or her own language..." Low-quality instruction or instruction that does not prepare the child to participate in the political and cultural life of their country (which necessarily includes literacy and proficiency in the language of the dominant culture) would also fall short of fulfilling the requirement in Article 29(d) of "preparation of the child for responsible life in a free society."

Article 29 does not specifically address mother tongue instruction but, taken with recent comments by the Committee on the Rights of the Child, it could be argued that instruction in the mother tongue is the child's right. The right of equal opportunity in education is further supported in international law by Article 5(e)(v) of the ICERD. That Article imposes a

duty on state parties “to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law ... in the enjoyment of the right to education and training.”

When a child who does not speak English begins school in Australia, equality of opportunity cannot be achieved in an “English only” instruction regime. In *Lau v. Nichols*, 414 U.S. 563, 565 (1974)—a landmark US case in 1974—the U.S. Supreme Court considered the educational rights of non-English speaking children of Chinese ancestry who were in school in California, where the school’s teachers spoke only English. The Court pointed out:

[T]here is no equality of treatment by providing students with the same facilities, textbooks, teachers, and curriculum; for students who do not understand English are effectively foreclosed from any meaningful education.

Similarly, the High Court in Australia has long acknowledged that the achievement of equality may require more than formal equality: special measures may be required “to achieve effective and genuine equality.” (For example, see *Gerhardy v. Brown* (1985) 159 CLR 70, 129, Brennan, J.) Further, it can be persuasively argued that an English-only curriculum is not “accessible” to a non-English speaking child, in violation of Article 5 of the Convention Against Discrimination in Education, which recognizes in Article 51 “the right of members of national minorities” to use or teach “their own language.” In 2009 the CRC Committee explained:

Article 30 of the Convention establishes the right of the indigenous child to use his or her own language. *In order to implement this right, education in the child’s own language is essential* (CRC Committee, General Comment No. 11, para 62 (italics supplied)).

Other UN declarations and international conventions affirm the language rights of indigenous children. Article 27 of the ICCPR ensures the rights of linguistic and cultural minorities “to enjoy their own culture, to profess and practise their own religion, or to use their own language.” Article 4(3) of the *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities* provides that

States should take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue (47/135.DRPBNERLM).

Article 14(3) of the UNDRIP similarly requires that

States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

The voice of the international community is neither unclear nor ambiguous. And it has been directed critically and explicitly at Australia. For example, in 2010 the ICERD Committee explicitly expressed concern over the apparent elimination of bilingual education programs in the Northern Territory and urged the government to conduct a national inquiry into the issue of bilingual education. It recommended that the state “adopt all necessary measures to preserve native languages and develop and carry out programmes to revitalize indigenous languages and bilingual and intercultural education for indigenous peoples” and “consider providing national minorities with adequate opportunities for the use and teaching of their own language.”³

In sum, the views of the international community are explicitly behind mother tongue education for indigenous children. For example, Article 14(3) of the UNDRIP provides that indigenous children have a right to access, when possible, “to an education in their own culture and provided in their own language.”

No right without a remedy—the lack of effective and enforceable domestic legislation

In spite of vigorous endorsement of the educational and linguistic rights of indigenous children, the Commonwealth has not guaranteed reliable protection through any specific domestic legislation or policy. Although the Commonwealth has promoted various indigenous language policies and indigenous language support initiatives and a National Indigenous Language Policy (<http://arts.gov.au/indigenous/languages>), none provides an enforceable right to mother tongue instruction.

There is a timeless legal adage, *ubi jus ibi remedium*, which translates as “There is no right without a remedy.” Said another way, this means that without an effective remedy for the violation of a right, the existence of

³ ICERD/C/AUS/CO 15-17 (2010)—Consideration of reports submitted... (Australia) paragraph 21.

the right itself is questionable.⁴ There are no modes of enforcement for international law provisions, even those written in strong, mandatory language. International conventions are not domestically enforceable without implementing domestic legislation.

At present, Australia does not have domestic legislation implementing the right of non-English speaking children to education in their mother tongue, and a recently developed curriculum for teaching indigenous languages does not guarantee mother tongue instruction. Although some aspects of the CRC Committee comments have been incorporated into domestic law (Ruddle & Nicholes 2004), the provisions for mother tongue instruction of CRC Articles 28 and 29 have not been included. While CRC had been annexed to the charter of HREOC,⁵ that does not confer legal power to implement it. All it can do is submit a report to the Minister, and publish it.

Of the international treaties mentioned above, only the ICERD has been implemented through domestic legislation in the Racial Discrimination Act 1975 (Cth).⁶ A complaint alleging discrimination based on race could be made to the AHRC, if on the basis of “race, colour, descent or national or ethnic origin,” a person engaged in an activity within an area protected by the Act did something that had the “purpose or effect of nullifying or impairing the recognition, enjoyment or exercise” of a human right “on an equal footing” (Racial Discrimination Act 1975, section 9(1)).

Only two complaints relating to an Aboriginal school program have been brought under the Racial Discrimination Act 1975 (Cth), and neither specifically raised the mother tongue issue. The first complaint, heard by HREOC in 1992,⁷ concerned the Traeger Park Primary School in the Northern Territory. But even in the sensitive and lengthy reasons for decisions handed down by the HREOC Inquiry, the Inquiry Commissioner

⁴ See *Nulyarimma v. Thompson* [1999] FCA 1192; *Chow Hung Ching v. The King*, (1948) 77 CLR 449, 478; and *Bradley v. Commonwealth*, (1973) 128 CLR 557, 582.

⁵ Australian Human Rights and Equal Opportunity Commission Act 1986, section 47 (since 2007 the Australian Human Rights Commission).

⁶ Anti-discrimination provisions of the ICCPR and ICESCR are domestically implemented in part through the Racial Discrimination Act 1975 and various state and territory discrimination laws, but not directly in relation to mother tongue languages. ICESCR, ICCPR and CRC have not been enacted into domestic law, although certain aspects of the rights recognized in the ICCPR (in addition to non-discrimination provisions) can be found in common law decisions and various statutory provisions. See *Minogue v. Williams* [2000] FCA 125 [23]-[25].

⁷ Heard by Commissioner W. Carter QC, 1992 EOC 92-415.

held that there had been no racial discrimination in closing the Aboriginal school. Although he would have preferred to find discrimination, the Commissioner found there had been none, because of the absence of certain requirements of the Racial Discrimination Act (RDA 1975).

In the second case, *Sinnapan and Others v. State of Victoria*⁸ the issue involved the closing of a government school that included a significant group of local “Aboriginal” children. A “whole-of-school” approach had provided special services for the indigenous group, with much of the emphasis on preserving their “culture and traditions.” The Supreme Court held that education was a “service” for racial discrimination purposes and found that neither it nor the Board could determine the policy aspects. There had been no unlawful discrimination. In sum, the prospects of protecting bilingual education by way of either Commonwealth or a State or Territory racial discrimination legislation are unlikely to produce results supportive of mother tongue initiatives.

Issues of cost, culture and a high burden of proof (de Plevitz 2003) make litigation an unwelcoming pathway for seeking redress. Further, even when the school authorities have been shown to act in violation of the law, some courts have been reluctant to decide on educational issues. For example, in a case seeking sign language instruction for a deaf child, the court found a violation of the Anti-Discrimination Act 1991 (QLD), but questioned the appropriateness of litigation:

In my opinion, it is a misconception to think that legal proceedings of this kind are the appropriate vehicle to introduce changes into the education system (Dickson 2005, quoting the judge in the case).

Similarly, resort to international education rights may be unavailing. Following a 1998 announcement by the Northern Territory Government that it was phasing out bilingual education programs in Aboriginal communities, HREOC reviewed international law and commentary on the issue of bilingual education and concluded:

For many Indigenous people, the decision of the Northern Territory government to phase out bilingual education programs in government schools in Aboriginal communities amounted to a denial of their right to

⁸ *Sinnapan and Others v. State of Victoria*, EOC 92-499 Aboriginal Students Support Committee Complaint Traeger Park Primary School (1993—original stay in SC); 567 (1993—main initial hearing by EOB Vic); 568 (1994) initial hearing by SC Vic; 663 (1995—final hearing by SC Vic); 699 (1995—final consent orders by EOB).

choose the mode of education for their children and threatens the viability of remaining languages (Australian Human Rights Commission 2000).⁹

As a result of the report and public pressure, bilingual education was given a temporary reprieve. Even so, bilingual education programs were continuously scaled back throughout the subsequent decade and funding for English as a Second Language programs decreased (Simpson, et al. 2011).

How can Australia move forward?

If neither international pressure nor domestic legislation nor litigation offer viable remedies for the denial of linguistic rights, how can they be secured? Given the current lack of any comprehensive regime for enforcement of rights, legislation is the most viable option. The linguistic rights of indigenous peoples of Australia need the protection of a specific, national statutory scheme. Also needed are the committed efforts of applied linguistics professionals, who could train bilingual teachers and design various mother tongue curricula.

Statutory protection of mother tongues could provide not only important support and opportunities for protection for individual students, but also a strong incentive for States to develop appropriate language instructional programs in bilingual education and mother tongue instruction. Around the world, it is becoming clear that the linguistic and educational rights of indigenous children cannot reliably be left for implementation by unassisted local groups or governments. A number of nations have recently enacted statutes to protect indigenous children's right to be educated in their mother tongue. An international best practice model is the legal architecture for the protection of Sami languages in Norway. Sami are the indigenous people of territory situated across the State borders of Norway, Sweden, Finland and Russia. The Sami Language Act of 1990 officially classifies six municipalities as bilingual, and so requiring all municipal offices to offer their services (including schooling) in both Norwegian and Sami.

The Commonwealth has sufficient legislative power to give effect to its international obligations.¹⁰ National legislation would have the

⁹ It should be noted that the judge's ruling was overturned on appeal and deaf children in Queensland have been provided with Auslan interpretive services. See "Delivering quality educational outcomes for deaf and hearing impaired students: the transition to Auslan" at

<http://education.qld.gov.au/studentsservices/staff/workshops/auslan.html>

¹⁰ See *Koowarta v. Bjelke-Petersen* (1982) 152 CLR 168.

advantage of providing a single and compelling approach to language rights issues and would place those rights out of reach of the vagaries of identity politics at the local level. Various measures to protect indigenous languages and to develop viable language programs (such as measures relating to teacher training, for local consultation, for the development of culturally appropriate materials) can and should be tackled by applied linguists and addressed at the state and territory level.¹¹ But the foundational right to indigenous mother tongue education should be recognized in a national statute that provides a clear and meaningful statement of the right and how it must be implemented.

Conclusion

Australia's national policy on education has, "in principle", supported indigenous language instruction for many years. Even so, progress in providing appropriate language instruction to the children who most desperately need it has been slow and sometimes subject to substantial backsliding. Failure to provide appropriate language instruction to the small minority of indigenous children for whom English is a second language is discriminatory and fails to live up to Australia's declared ideals. Statutory protection would go a long way toward putting indigenous-language-speaking children on an equal footing as they enter school and toward closing the achievement gap. Statutory protection would also ensure that educational rights are nationally recognized and achieved reliably, equally and predictably. Perhaps most importantly, such legislation, if broadly intentioned and creating obligations, would also help to preserve endangered indigenous languages and help to protect Australia's diverse cultural heritage. We need a regime of rights that includes a statute that specifically protects and provides a remedy for the denial of a child's right to education in their mother tongue.

¹¹ These include the Education Act 1990 (N.S.W.); Education and Training Reform Act 2006 (Vic); Education (General Provisions) Act 2006 (Qld); School Education Act 1999 (WA); Education Act 1972 (SA); Education Act 1994 (Tas) Education Act 2004 (ACT); and Education Act (NT).

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